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8
9 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
10

11 JENELL K. HOFFMAN, an individual,

12 Plaintiff,

13 vs.
14

15 RED WING BRANDS OF AMERICA, INC.,
a Minnesota corporation; JESSICA
16 HELSLEY, an individual; JASON PFAU, an
individual; and CHARLES CAVANHAGH,
an individual, inclusive,

17 Defendants.
18

CASE NO. 3:13-cv-00633-LRH-VPC

**DEFENDANT JESSICA HELSLEY'S
MEMORANDUM OF OBJECTIONS TO
EVIDENCE SUBMITTED IN SUPPORT
OF PLAINTIFF'S OPPOSITION TO
HELSLEY'S MOTION FOR SUMMARY
JUDGMENT**

19
20 Defendant Jessica Helsley, by and through her counsel of record, Kristol Bradley Ginapp,
21 Esq. of the law firm Lewis Brisbois Bisgaard & Smith LP, hereby objects to the evidence
22 submitted by Plaintiff Jenell K. Hoffman in support of Plaintiff's Opposition to Defendant
23 Helsley's Motion for Summary Judgment pursuant to Federal Rule of Evidence 56(c)(2).
24 Defendant Helsley specifically reserves her right to raise additional objections to the evidence
25 proffered by Plaintiff.

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OBJECTIONS TO EVIDENCE

A. GENERAL OBJECTIONS

Helsley generally objects to the evidence and exhibits proffered by Plaintiff as follows:

1. Helsley objects to the consideration of evidence not specifically identified in Plaintiff's Opposition to Helsley's Motion for Summary Judgment.

Defendant Helsley objects to the consideration of any exhibits or evidence submitted by Plaintiff in her joint exhibits to the motions for summary judgment filed by the four defendants in this matter which were not specifically identified in Plaintiff's Opposition to Helsley's Motion for Summary Judgment. Federal Rule of Civil Procedure 56 requires that "[a] party asserting that a fact...is genuinely disputed must support the assertions by: (A) citing to particular parts of materials in the record...or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or than an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Further, Local Rule 56-1 requires:

Motions for summary judgment and responses thereto shall include a concise statement setting forth each fact material to the disposition of the motion, which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies.

While Plaintiff purports to include a "Concise Statement of Facts" pursuant to Local Rule 56-1,¹ she also incorporates by reference a 19-page narrative statement containing numerous references to factual allegations and exhibits not cited in Plaintiff's Opposition to Helsley's motion. The obvious purpose of FRCP 56 and Local Rule 56-1 is to require parties to clearly identify for the Court and the adverse party the facts which are in dispute. Plaintiff's rambling 19-page narrative, purportedly applicable to all defendants and all causes of action, does not conform to the spirit of the rules. It would be impossible for, not to mention manifestly unjust to require, Helsley to sift through the narrative statement to identify with any particularity which, if any, of

¹ Helsley contends that Plaintiff's Concise Statement of Facts does not comport with the language and spirit of Rule 56-1 as it repeatedly fails to identify the "particular portions" of each piece of evidence upon which it relies.

1 the factual allegations or exhibits referenced in the narrative section, but not the actual Opposition
 2 to Helsley's motion, were intended to address the claims against Helsley. Helsley therefore objects
 3 to the consideration of any such evidence by the Court for its determination of Helsley's Motion
 4 for Summary Judgment.

5 Should it come to light that Plaintiff intended to rely on any such exhibits not specifically
 6 identified in support of her Opposition to Helsley's motion, Helsley expressly requests the Court
 7 grant her leave to address any such fact or evidence at such time pursuant to Federal Rule of Civil
 8 Procedure 56(e)(1).

9 **2. Helsley objects to the consideration of exhibits, argument, and contention**
 10 **lacking the proper evidentiary foundation.**

11 Plaintiff's Opposition is replete with argument and alleged "factual" contention offered as
 12 evidence, but which suffer from a complete lack evidentiary foundation. Plaintiff submits
 13 countless hours of video and audio recordings upon which factual contentions are purportedly
 14 based, but which are wholly unsubstantiated by testimony through affidavit, declaration, or
 15 deposition. The same is true for volumes of other documentary evidence produced by Plaintiff.

16 In many instances throughout Plaintiff's Opposition, Plaintiff simply asserts "facts"
 17 without even attempting to support such claim through admissible evidence. At countless times
 18 throughout the Opposition, Plaintiff engages in argument and contention without any citation to
 19 tangible evidence. At best, Plaintiff's assertions can be characterized as Plaintiff's speculation or
 20 conjecture regarding what occurred or what the evidence as a whole shows. At worst, the
 21 "factual" assertions border on improper testimony of counsel.

22 Rule 56 requires that the parties present evidence on summary judgment that could be
 23 presented in an admissible form at trial. This, at a minimum, requires a basic demonstration of
 24 foundation through a proper witness for trial. Fed. R. Evid. 901(a); *Bank of America v. Orr*, 285
 25 F.3d 764, 764 (9th Cir. 2002). Except as it relates to very limited instances of deposition
 26 testimony, Plaintiff's Opposition to Helsley's Motion for Summary Judgment entirely fails to
 27 conform to the basic requirements for admissibility. Helsley therefore objects to the Court's
 28 consideration of any evidence set forth without the proper foundation for the determination of

1 Helsley's Motion for Summary Judgment.

2 **B. SPECIFIC OBJECTIONS**

3 Helsley specifically objects to the following exhibits proffered by Plaintiff in support of
4 her Opposition to Helsley's Motion for Summary Judgment.

5 **1. Exhibit 1.1 – Deposition of Jenell Hoffman (video)**

6 In addition to the general objections set forth above, Helsley specifically objects to the use
7 of Exhibit 1.1 to support the Plaintiff's Opposition as follows:

8 (a) *Deficient references.* Plaintiff fails to cite with specificity the date and time, or
9 other location, of the testimony supporting the statement within Exhibit 1.1, referencing only
10 "Exh. 1.1" generally. The Court is not obliged to undertake the burden of reviewing the entire
11 deposition transcript in search of plaintiff's evidence and the defect warrants exclusion of the
12 evidence. *Orr*, 285 F.3d at 774-75.

13 (b) *Cumulative.* In light of the fact that Plaintiff has also included the entire transcripts
14 of her deposition testimony, the video of her deposition contained in Exhibit 1.1 amounts to the
15 needless presentation of cumulative evidence. The inclusion of the videotaped deposition, devoid
16 of proper citation, is an obvious attempt by Plaintiff to unfairly prejudice the Court against
17 Defendants through the presentation of evidence of Plaintiff's affect during her deposition, which
18 has no relevance to the issues presented in the instant motion. Thus, Exhibit 1.1 is should be
19 excluded pursuant to Fed. R. Evid. 401 and 403.

20 These objections apply not only to the admissibility of Exhibit 1.1, but also to the
21 admissibility of the alleged "factual contentions" which Plaintiff purports to support by the
22 exhibit.

23 **2. Exhibit 1.3 – Security Video Footage: January 24, 2012**

24 In addition to the general objections set forth above, Helsley specifically objects to the use
25 of Exhibit 1.3 to support the Plaintiff's Opposition as follows:

26 (a) *Deficient references.* Plaintiff never cites with specificity the time, or other
27 location, of the alleged evidence being offered in support of the statement within Exhibit 1.3,
28 referencing only "Exh. 1.3" generally. Exhibit 1.3 contains a video covering a time period of

1 approximately 22 hours and 41 minutes. The Court is not obliged to undertake the burden of
 2 reviewing the entire video in search of plaintiff's evidence and the defect warrants exclusion of the
 3 evidence. *Orr*, 285 F.3d at 774-75.

4 (b) *Foundation*. Plaintiff fails to provide the testimony of a percipient witness – by
 5 affidavit or otherwise – to support her contention that the video footage in Exhibit 1.3 represents
 6 what Plaintiff's argument claims it represents. Fed. R. Evid. 901(a); *Orr*, 285 F.3d at 764.

7 (c) *Relevance*. Plaintiff offers Exhibit 1.3 in an effort to dispute the element of
 8 Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged
 9 against Helsley. However, Plaintiff fails to establish the relevance of the security video footage
 10 contained in Exhibit 1.3 to Helsley's state of mind. Indeed, as offered, the evidence and argument
 11 only focus on Plaintiff's state of mind, which is not at issue in the present motion. Accordingly,
 12 the evidence has no probative value regarding any material fact at issue and is, therefore,
 13 inadmissible. Fed. R. Evid. 401.

14 (d) The quality, resolution, and angle of the video contained in Exhibit 1.3 are
 15 inadequate rendering the content indistinct regarding the purpose for which it is offered. Fed. R.
 16 Evid. 401, 403.

17 (e) The video omits important related material – sound – the exclusion of which
 18 renders the evidence confusing, misleading, and incomplete for the purposes for which it is being
 19 offered. Fed. R. Evid. 403.

20 These objections apply not only to the admissibility of Exhibit 1.3, but also to the
 21 admissibility of the alleged "factual contentions" which Plaintiff purports to support by the
 22 exhibit.

23 3. **Exhibit 1.6 – Security Video Footage: February 18, 2012**

24 In addition to the general objections set forth above, Helsley specifically objects to the use
 25 of Exhibit 1.6 to support the Plaintiff's Opposition as follows:

26 (a) *Deficient references*. Plaintiff never cites with specificity the time, or other
 27 location, of the alleged evidence being offered in support of the statement within Exhibit 1.6,
 28 referencing only "Exh. 1.6" generally. Exhibit 1.6 contains a video covering a time period of

1 nearly 24 hours. The Court is not obliged to undertake the burden of reviewing the entire video in
 2 search of plaintiff's evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at
 3 774-75.

4 (b) *Foundation*. Plaintiff fails to provide the testimony of a percipient witness – by
 5 affidavit or otherwise – to support her contention that the video footage in Exhibit 1.6 represents
 6 what Plaintiff's argument claims it represents. Fed. R. Evid. 901(a); *Orr*, 285 F.3d at 764.

7 (c) *Relevance*. Plaintiff offers Exhibit 1.6 in an effort to dispute the element of
 8 Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged
 9 against Helsley. However, Plaintiff fails to establish the relevance of the security video footage
 10 contained in Exhibit 1.6 to Helsley's intent. Plaintiff even fails to establish that Helsley is present
 11 at any time during the video. Accordingly, the evidence has no probative value regarding any
 12 material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

13 (d) *Misrepresentation of evidence*. In every instance that Plaintiff cites Exhibit 1.6,
 14 Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff
 15 claims, rendering the contents of Exhibit 1.6 irrelevant and inadmissible pursuant to Fed. R. Evid.
 16 401 and 403.

17 (d) The quality, resolution, and angle of the video contained in Exhibit 1.6 are
 18 inadequate rendering the content indistinct regarding the purpose for which it is offered. Fed. R.
 19 Evid. 401, 403.

20 (e) The video omits important related material – sound – the exclusion of which
 21 renders the evidence confusing, misleading, and incomplete for the purposes for which it is being
 22 offered. Fed. R. Evid. 403.

23 These objections apply not only to the admissibility of Exhibit 1.6, but also to the
 24 admissibility of the alleged "factual contentions" which Plaintiff purports to support by the
 25 exhibit.

26 **4. Exhibit 1.14 – Security Video Footage: April 20, 2012**

27 In addition to the general objections set forth above, Helsley specifically objects to the use
 28 of Exhibit 1.14 to support the Plaintiff's Opposition as follows:

1 (a) *Deficient references.* Plaintiff does not consistently cite with specificity the time, or
 2 other location, of the alleged evidence being offered in support of the statement within Exhibit
 3 1.14, often referencing only “Exh. 1.14” generally. Exhibit 1.14 contains a video covering a time
 4 period of approximately 12 hours. The Court is not obliged to undertake the burden of reviewing
 5 the entire video in search of plaintiff’s evidence and the defect warrants exclusion of the evidence.
 6 *Orr*, 285 F.3d at 774-75.

7 (b) *Foundation.* Plaintiff fails to provide the testimony of a percipient witness – by
 8 affidavit or otherwise – to support her contention that the video footage in Exhibit 1.14 represents
 9 what Plaintiff’s argument claims it represents. Fed. R. Evid. 901(a); *Orr*, 285 F.3d at 764.

10 (c) *Speculation.* Every instance for which Plaintiff offers Exhibit 1.14 as evidence
 11 requires the Court to speculate (or, more specifically, buy into Plaintiff’s speculation) as to what
 12 the video is actually depicting. Speculation is not admissible evidence and, to that end, does not
 13 represent evidence of a material fact. *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989)
 14 (speculative and/or conclusory allegations that are unsupported by admissible evidence are insufficient
 15 to overcome summary judgment).

16 (d) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 1.14,
 17 Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff
 18 claims, rendering the contents of Exhibit 1.14 irrelevant and inadmissible pursuant to Fed. R.
 19 Evid. 401 and 403.

20 (d) The quality, resolution, and angle of the video contained in Exhibit 1.14 are
 21 inadequate rendering the content indistinct regarding the purpose for which it is offered. Fed. R.
 22 Evid. 401, 403.

23 (e) The video omits important related material – sound – the exclusion of which
 24 renders the evidence confusing, misleading, and incomplete for the purposes for which it is being
 25 offered. Fed. R. Evid. 403.

26 These objections apply not only to the admissibility of Exhibit 1.14, but also to the
 27 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
 28 exhibit.

1 5. **Exhibit 2 – Deposition of Jenell K. Tarpey (Vol. I – May 22, 2014; Vol. II –**
 2 **July 24, 2014)**

3 In addition to the general objections set forth above, Helsley specifically objects to the use
 4 of Exhibit 2 to support the Plaintiff's Opposition as follows:

5 (a) *Deficient references.* Plaintiff does not consistently cite with specificity the page
 6 and line numbers of the alleged testimony being offered in support of her argument within Exhibit
 7 2, often referencing only "Exh. 2" generally. Exhibit 2 is the entire transcript of Plaintiff's
 8 deposition, which spanned two days and contains nearly 450 pages of testimony. The Court is not
 9 obliged to undertake the burden of reviewing the entire deposition transcript in search of plaintiff's
 10 evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at 774-75.

11 (b) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 2,
 12 Plaintiff misrepresents its contents such that the cited testimony does not actually provided any
 13 evidentiary support for Plaintiff's argument, rendering the contents of Exhibit 2 irrelevant and
 14 inadmissible pursuant to Fed. R. Evid. 401 and 403.

15 (c) *Relevance.* Plaintiff offers Exhibit 2 in an effort to dispute the element of Helsley's
 16 "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged against Helsley.
 17 However, Plaintiff fails to establish the relevance of the testimony cited to Helsley's state of mind.
 18 Indeed, as offered, the bulk of the testimony offered only focuses on Plaintiff's own state of mind,
 19 which is not at issue in the present motion. Accordingly, the evidence has no probative value
 20 regarding any material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

21 These objections apply not only to the admissibility of Exhibit 2, but also to the
 22 admissibility of the alleged "factual contentions" which Plaintiff purports to support by the
 23 exhibit.

24 6. **Exhibit 3 – Deposition of Jessica Helsley (May 23, 2014)**

25 In addition to the general objections set forth above, Helsley specifically objects to the use
 26 of Exhibit 3 to support the Plaintiff's Opposition as follows:

27 (a) *Deficient references.* Plaintiff does not consistently cite with specificity the page
 28 and line numbers of the alleged testimony being offered in support of her argument within Exhibit

3. For example, at in Plaintiff's Concise Statement of Facts supporting her Opposition, at fact #7, Plaintiff merely references only "Exh. 3" generally. Exhibit 3 is the entire transcript of Plaintiff's deposition, which includes approximately 130 pages of testimony. The Court is not obliged to undertake the burden of reviewing the entire deposition transcript in search of plaintiff's evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at 774-75.

These objections apply not only to the admissibility of Exhibit 3, but also to the admissibility of the alleged "factual contentions" which Plaintiff purports to support by the exhibit.

7. Exhibit 4 – Deposition of Jason Pfau (June 12, 2014)

In addition to the general objections set forth above, Helsley specifically objects to the use of Exhibit 4 to support the Plaintiff's Opposition as follows:

(a) *Deficient references.* Plaintiff does not cite with specificity the page and line numbers of the alleged testimony being offered in support of her argument within Exhibit 4. Specifically, Plaintiff cites Exhibit 4 solely in support of Plaintiff's Concise Statement of Facts supporting her Opposition, at fact #2, merely references only "Exh. 4" generally. Exhibit 4 is the entire transcript of Plaintiff's deposition, encompassing approximately 160 pages of testimony. The Court is not obliged to undertake the burden of reviewing the entire deposition transcript in search of plaintiff's evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at 774-75.

(b) *Relevance.* Plaintiff offers Exhibit 4 in an effort to dispute the element of Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged against Helsley. However, Plaintiff fails to establish the relevance of the testimony contained in Exhibit 4 to Helsley's state of mind. Accordingly, the evidence has no probative value regarding any material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

(c) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 4, Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff claims, rendering the contents of Exhibit 4 irrelevant and inadmissible pursuant to Fed. R. Evid. 401 and 403.

1 These objections apply not only to the admissibility of Exhibit 4, but also to the
 2 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
 3 exhibit.

4 8. **Exhibit 10 – Investigation Report of Carrie Heimer, Red Wing VP of Human**
 5 **Resources**

6 In addition to the general objections set forth above, Helsley specifically objects to the use
 7 of Exhibit 10 to support the Plaintiff’s Opposition as follows:

8 (a) *Deficient references.* Plaintiff does not cite with specificity the page or other
 9 location of the alleged evidence being offered in support of her argument within Exhibit 10.
 10 Specifically, Plaintiff cites Exhibit 10 solely in support of Plaintiff’s Concise Statement of Facts
 11 supporting her Opposition, at fact #4, merely referencing only “Exh. 10” generally. Exhibit 10 is
 12 a 35 page document summarizing Red Wing’s investigation of Plaintiff’s sexual harassment claim.
 13 The Court is not obliged to undertake the burden of reviewing the entire 35-page document in
 14 search of plaintiff’s evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at
 15 774-75.

16 (b) *Hearsay.* Plaintiff submits Exhibit 10 for the truth of its contents regarding
 17 Plaintiff’s response to Helsley’s allegedly showing her nude photographs. Exhibit 10, in an of
 18 itself, is hearsay where, as here, Plaintiff has failed to authenticate the document. Additionally,
 19 even with authentication, the contents of the document further present an additional hearsay
 20 problem as they are out-of-court statements made by numerous individuals, other than the preparer
 21 of the document, which are being offered for as proof of the matter asserted. In other words,
 22 Exhibit 10 presents a double hearsay issue that does not fall under any exception to the rule.
 23 Accordingly, it must be excluded pursuant to Fed. R. Civ. Proc. 801 and 802.

24 (c) *Relevance.* Plaintiff offers Exhibit 10 in an effort to dispute the element of
 25 Helsley’s “intent” in Plaintiff’s claim for intentional infliction of emotional distress alleged
 26 against Helsley. However, Plaintiff fails to establish the relevance of the information contained in
 27 Exhibit 10 to Helsley’s state of mind. Indeed, as offered, the evidence and argument only focus on
 28 Plaintiff’s state of mind, which is not at issue in the present motion. Accordingly, the evidence

1 has no probative value regarding any material fact at issue and is, therefore, inadmissible. Fed. R.
2 Evid. 401.

3 These objections apply not only to the admissibility of Exhibit 10, but also to the
4 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
5 exhibit.

6 **9. Exhibit 20 – Deposition of Patrick Tarpey (November 21, 2014)**

7 In addition to the general objections set forth above, Helsley specifically objects to the use
8 of Exhibit 20 to support the Plaintiff’s Opposition as follows:

9 (a) *Misrepresentation of evidence.* In most every instance that Plaintiff cites Exhibit
10 20, Plaintiff misrepresents its contents to the extent that the contents cited do not support what the
11 Plaintiff claims, rendering the contents of Exhibit 20 irrelevant and inadmissible pursuant to Fed.
12 R. Evid. 401 and 403.

13 (b) *Relevance.* Plaintiff offers Exhibit 20 in an effort to dispute the element of
14 Helsley’s “intent” in Plaintiff’s claim for intentional infliction of emotional distress alleged
15 against Helsley. However, Plaintiff fails to establish the relevance of the testimony contained in
16 Exhibit 20 to Helsley’s state of mind. Accordingly, the evidence has no probative value regarding
17 any material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

18 These objections apply not only to the admissibility of Exhibit 20, but also to the
19 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
20 exhibit.

21 **10. Exhibit 21 – Deposition of Roxane Zayas (August 14, 2014)**

22 In addition to the general objections set forth above, Helsley specifically objects to the use
23 of Exhibit 21 to support the Plaintiff’s Opposition as follows:

24 (a) *Deficient references.* Plaintiff does not consistently cite with specificity the page or
25 other location of the alleged evidence being offered in support of her argument within Exhibit 21.
26 Specifically, Plaintiff cites Exhibit 21 in support of Plaintiff’s Concise Statement of Facts
27 supporting her Opposition, at facts #7 and #8, merely referencing only “Exh. 21” generally.
28 Exhibit 21 is the entire transcript of Roxane Zayas’s deposition, encompassing approximately 186

1 pages of testimony. The Court is not obliged to undertake the burden of reviewing the entire
 2 deposition transcript in search of plaintiff's evidence and the defect warrants exclusion of the
 3 evidence. *Orr*, 285 F.3d at 774-75.

4 (b) *Misrepresentation of evidence.* In most every instance that Plaintiff cites Exhibit
 5 21, Plaintiff misrepresents its contents to the extent that the contents do not support what the
 6 Plaintiff claims, rendering the contents of Exhibit 21 irrelevant and inadmissible pursuant to Fed.
 7 R. Evid. 401 and 403.

8 (c) *Relevance.* Plaintiff offers Exhibit 21 in an effort to dispute the element of
 9 Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged
 10 against Helsley. However, Plaintiff fails to establish the relevance of the testimony contained in
 11 Exhibit 21 to Helsley's state of mind. Accordingly, the evidence has no probative value regarding
 12 any material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

13 These objections apply not only to the admissibility of Exhibit 21, but also to the
 14 admissibility of the alleged "factual contentions" which Plaintiff purports to support by the
 15 exhibit.

16 **11. Exhibit 22 – Walgreen's Prescription Profile for Janell Tarpey²**

17 In addition to the general objections set forth above, Helsley specifically objects to the use
 18 of Exhibit 22 to support the Plaintiff's Opposition as follows:

19 (a) *Relevance.* Plaintiff offers Exhibit 22 in an effort to dispute the element of
 20 Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged
 21 against Helsley. However, Plaintiff fails to establish the relevance of Plaintiff's prescription
 22 information contained in Exhibit 22 to Helsley's state of mind. Indeed, as offered, the evidence
 23 and argument only focus on Plaintiff's state of mind, which is not at issue in the present motion.
 24 Accordingly, the evidence has no probative value regarding any material fact at issue and is,
 25 therefore, inadmissible. Fed. R. Evid. 401.

26 _____
 27 ² It appears that Plaintiff's citation to Exhibit 22, Opp. (Dkt. #75) at 13:17-18, is possibly a
 28 typographical error. Helsley asserts her objections here as though it is not an error.

1 These objections apply not only to the admissibility of Exhibit 22, but also to the
 2 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
 3 exhibit.

4 **12. Exhibit 23 – Jessica Helsley’s Responses to Jenell Hoffman Interrogatories**
 5 **(November 6, 2014)**

6 In addition to the general objections set forth above, Helsley specifically objects to the use
 7 of Exhibit 23 to support the Plaintiff’s Opposition as follows:

8 (a) *Misrepresentation of evidence.* The purpose for which Exhibit 23 is cited in
 9 Plaintiff’s Opposition to Helsley’s motion is not supported by the evidence cited by Plaintiff –
 10 Helsley’s response to Interrogatory No. 16. Moreover, even if Plaintiff had identified the
 11 appropriate response – Helsley’s Response to Interrogatory No. 11, Plaintiff so misrepresents the
 12 contents of Helsley’s response that the contents of the exhibit do not support what the Plaintiff
 13 claims, rendering the contents of Exhibit 23 irrelevant and inadmissible pursuant to Fed. R. Evid.
 14 401 and 403.

15 (b) *Hearsay.* Plaintiff submits Exhibit 23 for the truth of its contents regarding
 16 Plaintiff’s allegation that Helsley fabricated a story about what occurred between Plaintiff and a
 17 customer. However, as detailed in Helsley’s Response to Interrogatory No. 11, Helsley is merely
 18 reporting what she was told by the customer. This is the very definition of hearsay: an out-of-
 19 court statement which is being offered for proof of the matter asserted. In other words, as offered,
 20 Exhibit 23 presents a hearsay issue that does not fall under any exception to the rule. Accordingly,
 21 it must be excluded pursuant to Fed. R. Civ. Proc. 801 and 802.

22 (c) *Relevance.* Plaintiff offers Exhibit 23 in an effort to dispute the element of
 23 Helsley’s “intent” in Plaintiff’s claim for intentional infliction of emotional distress alleged
 24 against Helsley. However, Plaintiff fails to establish the relevance of the testimony contained in
 25 Exhibit 23 to Helsley’s state of mind. Accordingly, the evidence has no probative value regarding
 26 any material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

27 These objections apply not only to the admissibility of Exhibit 23, but also to the
 28 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the exhibit

1 **13. Exhibit 24 – Deposition of Jennifer Castro (November 7, 2014)**

2 In addition to the general objections set forth above, Helsley specifically objects to the use
3 of Exhibit 24 to support the Plaintiff's Opposition as follows:

4 (a) *Deficient references.* Plaintiff does not cite with specificity the page or other
5 location of the alleged evidence being offered in support of her argument within Exhibit 24.
6 Specifically, Plaintiff cites Exhibit 24 in support of Plaintiff's Concise Statement of Facts
7 supporting her Opposition, at facts #6, #7, and #8, merely referencing only "Exh. 24" generally.
8 Exhibit 4 is the entire transcript of Jennifer Castro's deposition, encompassing approximately 114
9 pages of testimony. The Court is not obliged to undertake the burden of reviewing the entire
10 deposition transcript in search of plaintiff's evidence and the defect warrants exclusion of the
11 evidence. *Orr*, 285 F.3d at 774-75.

12 (b) *Speculation.* Every instance for which Plaintiff offers Exhibit 24 as evidence relies
13 on the witness's speculation as evidence. Speculation is not admissible evidence and, to that end,
14 does not represent evidence of a material fact. *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989)
15 (speculative and/or conclusory allegations that are unsupported by admissible evidence are insufficient
16 to overcome summary judgment).

17 (c) *Misrepresentation of evidence.* In most every instance that Plaintiff cites Exhibit
18 24, Plaintiff misrepresents its contents to the extent that the contents do not support what the
19 Plaintiff claims, rendering the contents of Exhibit 24 irrelevant and inadmissible pursuant to Fed.
20 R. Evid. 401 and 403.

21 (d) *Relevance.* Plaintiff offers Exhibit 24 in an effort to dispute the element of
22 Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged
23 against Helsley. However, Plaintiff fails to establish the relevance of the testimony contained in
24 Exhibit 24 to Helsley's state of mind. Indeed, as offered, the evidence and argument only focus on
25 Plaintiff's state of mind, which is not at issue in the present motion. Accordingly, the evidence
26 has no probative value regarding any material fact at issue and is, therefore, inadmissible. Fed. R.
27 Evid. 401.

28 These objections apply not only to the admissibility of Exhibit 24, but also to the

1 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
2 exhibit.

3 **14. Exhibit 26 – Sales Reports for Harris Salinas Rebar**

4 In addition to the general objections set forth above, Helsley specifically objects to the use
5 of Exhibit 26 to support the Plaintiff’s Opposition as follows:

6 (a) *Deficient references.* Plaintiff does not cite with specificity the page or other
7 location of the alleged evidence being offered in support of her argument within Exhibit 26.
8 Specifically, Plaintiff cites Exhibit 26 in support of Plaintiff’s Concise Statement of Facts
9 supporting her Opposition, at fact #5, merely referencing only “Exh. 26” generally. Exhibit 26 is
10 is an eight (8) page document with a number of transactions listed in various forms. The Court is
11 not obliged to undertake the burden of reviewing the entire exhibit in search of plaintiff’s evidence
12 and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at 774-75.

13 (b) *Foundation.* Plaintiff fails to provide the testimony of a percipient witness – by
14 affidavit or otherwise – to support her contention that the information contained in Exhibit 26
15 represents what Plaintiff’s argument claims it represents, rendering it inadmissible. Fed. R. Evid.
16 901(a); *Orr*, 285 F.3d at 764.

17 (c) *Speculation.* Every instance for which Plaintiff offers Exhibit 26 as evidence
18 requires the Court to speculate (or, more specifically, buy into Plaintiff’s speculation) as to what
19 the evidence actual shows. Speculation is not admissible evidence and, to that end, does not
20 represent evidence of a material fact. *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989)
21 (speculative and/or conclusory allegations that are unsupported by admissible evidence are insufficient
22 to overcome summary judgment).

23 (d) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 26,
24 Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff
25 claims, rendering the contents of Exhibit 26 irrelevant and inadmissible pursuant to Fed. R. Evid.
26 401 and 403.

27 (e) *Hearsay.* Plaintiff submits Exhibit 26 for the truth of its contents regarding
28 Plaintiff’s allegation that Helsley engaged in conduct designed to “set up a pretext for firing

Hoffman” by “enter[ing] two transactions to Albarran under Hoffman’s number.” Exhibit 26, in and of itself, is hearsay where, as here, Plaintiff has failed to authenticate the document. Additionally, even with authentication, the contents of the document further present an additional hearsay problem as they are out-of-court statements made by numerous individuals, other than the preparer of the document, which are being offered for proof of the matter asserted. In other words, Exhibit 26 presents a double hearsay issue that does not fall under any exception to the rule. Accordingly, it must be excluded pursuant to Fed. R. Civ. Proc. 801 and 802.

These objections apply not only to the admissibility of Exhibit 26, but also to the admissibility of the alleged “factual contentions” which Plaintiff purports to support by the exhibit.

15. Exhibit 34 – Expert Report of Dr. Stephen Reich, J.D./Ph.D., with Expert Qualification (June 9, 2012)

In addition to the general objections set forth above, Helsley specifically objects to the use of Exhibit 34 to support the Plaintiff’s Opposition as follows:

(a) *Deficient references.* Plaintiff does not cite with specificity the page or other location of the alleged evidence being offered in support of her argument within Exhibit 34. Specifically, Plaintiff cites Exhibit 34 in support of Plaintiff’s Concise Statement of Facts supporting her Opposition, at fact #8, merely referencing only “Exh. 34” generally. Exhibit 34 is a 23 page document, including a 13-page psychological evaluation of Plaintiff. The Court is not obliged to undertake the burden of reviewing the entire exhibit in search of plaintiff’s evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at 774-75.

(b) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 34, Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff claims, rendering the contents of Exhibit 34 irrelevant and inadmissible pursuant to Fed. R. Evid. 401 and 403.

(c) *Hearsay.* Plaintiff submits Exhibit 34 for the truth of its contents regarding Plaintiff’s allegation that her “inability to fully express her distress over Helsley’s activities was...a product of the mental and emotional difficulties she suffered as a result thereof.” Exhibit

34, in and of itself, is hearsay where, as here, Plaintiff has failed to authenticate the contents of the document. Additionally, even with authentication, the contents of the document further present an additional hearsay problem as it contains out-of-court statements made by Plaintiff and other individuals, other than the preparer of the document, which are being offered by Plaintiff for proof of the matter asserted. In other words, Exhibit 34 presents a double hearsay issue that does not fall under any exception to the rule. Accordingly, it must be excluded pursuant to Fed. R. Civ. Proc. 801 and 802.

(d) *Relevance.* Plaintiff offers Exhibit 34 in an effort to dispute the element of Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged against Helsley. However, Plaintiff fails to establish the relevance of Plaintiff's own psychology expert's report contained in Exhibit 34 to Helsley's state of mind. Indeed, as offered, the evidence and argument only focus on *Plaintiff's* state of mind, which is not at issue in the present motion. Accordingly, the evidence has no probative value regarding any material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

These objections apply not only to the admissibility of Exhibit 34, but also to the admissibility of the alleged "factual contentions" which Plaintiff purports to support by the exhibit.

16. Exhibit 36 – Screen Shot of Jenell Hoffman in Agony (February 18, 2014)

In addition to the general objections set forth above, Helsley specifically objects to the use of Exhibit 36 to support the Plaintiff's Opposition as follows:

(a) *Foundation.* Plaintiff fails to provide the testimony of a percipient witness – by affidavit or otherwise – to support her contention that the "screen shot" of video footage represents what Plaintiff's argument claims it represents. Fed. R. Evid. 901(a); *Orr*, 285 F.3d at 764.

(b) *Speculation.* Every instance for which Plaintiff offers Exhibit 36 as evidence requires the Court to speculate (or, more specifically, adopt Plaintiff's counsel's speculation) as to what the evidence actual shows. Speculation is not admissible evidence and, to that end, does not represent evidence of a material fact. *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989) (speculative and/or conclusory allegations that are unsupported by admissible evidence are insufficient

1 to overcome summary judgment).

2 (c) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 36,
3 Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff
4 claims, rendering the contents of Exhibit 36 irrelevant and inadmissible pursuant to Fed. R. Evid.
5 401 and 403.

6 (d) *Relevance.* Plaintiff offers Exhibit 36 in an effort to dispute the element of
7 Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged
8 against Helsley. However, Plaintiff fails to establish the relevance of the security video "screen
9 shot" of Plaintiff contained in Exhibit 36 to Helsley's state of mind. Indeed, as offered, the
10 evidence and argument only focus on Plaintiff's state of mind, which is not at issue in the present
11 motion. Accordingly, the evidence has no probative value regarding any material fact at issue and
12 is, therefore, inadmissible. Fed. R. Evid. 401.

13 (e) The screen shot of the video footage contained in Exhibit 36 does not fairly and
14 accurately represent what it purports to represent. Fed. R. Evid. 401.

15 (f) The quality, resolution, and angle of the screen shot contained in Exhibit 36 is
16 inadequate rendering the content indistinct regarding the purpose for which it is offered. To that
17 end, the images contained in the screen shot, especially that of the most relevant image - Plaintiff's
18 face, are substantially distorted, dark, and blurry. Fed. R. Evid. 401, 403.

19 (g) The screen shot contained in Exhibit 36 omits important related material – images
20 of events immediately preceding and following the moment captured – the exclusion of which
21 renders the evidence confusing, misleading, and incomplete for the purposes for which it is being
22 offered. Fed. R. Evid. 403.

23 (h) *Best evidence rule.* The screen shot from security video footage taken February 18,
24 2012, produced by Plaintiff as Exhibit 1.6. Plaintiff is offering the photograph, without
25 authentication or proper foundation, to prove its contents – that Plaintiff was "in agony." Rule
26 1002 of the Federal Rules of Evidence requires the proponent of such evidence to proffer the
27 original as the best evidence of its contents. The best evidence in this case is the video footage.
28 Thus, exclusion of Exhibit 36 is proper under Rule 1002.

1 These objections apply not only to the admissibility of Exhibit 36, but also to the
 2 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
 3 exhibit.

4 **17. Exhibit 37 – Sales Slips for Alleged Theft Transaction**

5 In addition to the general objections set forth above, Helsley specifically objects to the use
 6 of Exhibit 37 to support the Plaintiff’s Opposition as follows:

7 (a) *Foundation.* Plaintiff fails to provide the testimony of a percipient witness – by
 8 affidavit or otherwise – to support her contention that Exhibit 37 represents what Plaintiff’s
 9 argument claims it represents. Fed. R. Evid. 901(a); *Orr*, 285 F.3d at 764.

10 (b) *Speculation.* Every instance for which Plaintiff offers Exhibit 37 as evidence
 11 requires the Court to speculate (or, more specifically, adopt Plaintiff’s speculation) as to what the
 12 evidence actual shows. Speculation is not admissible evidence and, to that end, does not represent
 13 evidence of a material fact. *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989) (speculative and/or
 14 conclusory allegations that are unsupported by admissible evidence are insufficient to overcome
 15 summary judgment).

16 (c) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 37,
 17 Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff
 18 claims, rendering Exhibit 37 irrelevant and inadmissible pursuant to Fed. R. Evid. 401 and 403.

19 These objections apply not only to the admissibility of Exhibit 37, but also to the
 20 admissibility of the alleged “factual contentions” which Plaintiff purports to support by the
 21 exhibit.

22 **18. Exhibit 40 – E-mails RE: Investigation into Termination of Jenell Hoffman**

23 In addition to the general objections set forth above, Helsley specifically objects to the use
 24 of Exhibit 40 to support the Plaintiff’s Opposition as follows:

25 (a) *Deficient references.* Plaintiff does not cite with specificity the page or other
 26 location of the alleged evidence being offered in support of her argument within Exhibit 40.
 27 Specifically, Plaintiff cites Exhibit 40 in support of her contention that “[s]uspicious transactions
 28 under Hoffman’s number started in November 2011, mere weeks into Hoffman’s employment,

beginning with a sale and return to Albarran.” See Opposition (Dkt. #75) at 9:8-10. Exhibit 34 is a 39 page document consisting of emails and notes relating to Red Wing’s investigation into her termination. The Court is not obliged to undertake the burden of reviewing the entire exhibit in search of plaintiff’s evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d at 774-75.

(b) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 40, Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff claims, rendering the contents of Exhibit 40 irrelevant and inadmissible pursuant to Fed. R. Evid. 401 and 403.

(c) *Hearsay.* Plaintiff submits Exhibit 40 for the truth of its contents regarding “suspicious transactions” entered under Plaintiff’s employee number. Exhibit 40, in and of itself, is hearsay where, as here, Plaintiff has failed to authenticate the document. Additionally, even with authentication, the contents of the document further present an additional hearsay problem as they are out-of-court statements made by numerous individuals, other than the preparer of the document, which are being offered for as proof of the matter asserted. In other words, Exhibit 40 presents a double hearsay issue that does not fall under any exception to the rule. Accordingly, it must be excluded pursuant to Fed. R. Civ. Proc. 801 and 802.

(d) *Relevance.* Plaintiff offers Exhibit 40 in an effort to dispute the element of Helsley’s “intent” in Plaintiff’s claim for intentional infliction of emotional distress alleged against Helsley. However, Plaintiff fails to establish the relevance of the evidence contained in Exhibit 40 to Helsley’s state of mind. Accordingly, the evidence has no probative value regarding any material fact at issue and is, therefore, inadmissible. Fed. R. Evid. 401.

These objections apply not only to the admissibility of Exhibit 40, but also to the admissibility of the alleged “factual contentions” which Plaintiff purports to support by the exhibit.

19. Exhibit 50 – Medical & ER Records for Jenell Tarpey

In addition to the general objections set forth above, Helsley specifically objects to the use of Exhibit 50 to support the Plaintiff’s Opposition as follows:

1 (a) *Deficient references.* Plaintiff does not cite with specificity the page or other
 2 location of the alleged evidence being offered in support of her argument within Exhibit 50.
 3 Specifically, Plaintiff cites Exhibit 50 in support of her contentions regarding her medical
 4 damages. *See* Opposition (Dkt. #75) at 13:8-18. Exhibit 50 is a 21 page document consisting of
 5 medical records. The Court is not obliged to undertake the burden of reviewing the entire exhibit
 6 in search of plaintiff's evidence and the defect warrants exclusion of the evidence. *Orr*, 285 F.3d
 7 at 774-75.

8 (b) *Foundation.* Plaintiff fails to provide the testimony of a percipient witness – by
 9 affidavit or otherwise – to support her contention that Exhibit 50 represents what Plaintiff's
 10 argument claims it represents. Fed. R. Evid. 901(a); *Orr*, 285 F.3d at 764.

11 (c) *Speculation.* Every instance for which Plaintiff offers Exhibit 50 as evidence
 12 requires the Court to speculate (or, more specifically, adopt Plaintiff's counsel's speculation) as to
 13 what the evidence actual shows. Speculation is not admissible evidence and, to that end, does not
 14 represent evidence of a material fact. *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989)
 15 (speculative and/or conclusory allegations that are unsupported by admissible evidence are insufficient
 16 to overcome summary judgment).

17 (d) *Misrepresentation of evidence.* In every instance that Plaintiff cites Exhibit 50,
 18 Plaintiff misrepresents its contents to the extent that the contents do not support what the Plaintiff
 19 claims, rendering the contents of Exhibit 50 irrelevant and inadmissible pursuant to Fed. R. Evid.
 20 401 and 403.

21 (e) *Hearsay.* Plaintiff submits Exhibit 50 for the truth of its contents regarding the
 22 cause of her alleged medical damages. Exhibit 50, in and of itself, is hearsay where, as here,
 23 Plaintiff has failed to authenticate the document. Additionally, even with authentication, the
 24 contents of the document further present an additional hearsay problem as it contains out-of-court
 25 statements made by numerous individuals, other than the preparer of the document, which are
 26 being offered for as proof of the matter asserted. In other words, Exhibit 50 presents a double
 27 hearsay issue that does not fall under any exception to the rule. Accordingly, it must be excluded
 28 pursuant to Fed. R. Civ. Proc. 801 and 802.

1 (f) *Relevance*. Plaintiff offers Exhibit 50 in an effort to dispute the element of
 2 Helsley's "intent" in Plaintiff's claim for intentional infliction of emotional distress alleged
 3 against Helsley. However, Plaintiff fails to establish the relevance of Plaintiff's own medical
 4 records contained in Exhibit 50 to Helsley's state of mind. Indeed, as offered, the evidence and
 5 argument only focus on Plaintiff's state of mind, which is not at issue in the present motion.
 6 Accordingly, the evidence has no probative value regarding any material fact at issue and is,
 7 therefore, inadmissible. Fed. R. Evid. 401.

8 These objections apply not only to the admissibility of Exhibit 50, but also to the
 9 admissibility of the alleged "factual contentions" which Plaintiff purports to support by the
 10 exhibit.

11 Respectfully submitted,

12 DATED this 9th day of March, 2015.

13
 14 LEWIS BRISBOIS BISGAARD & SMITH LLP

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and that on the 9th day of March, 2015, I did cause a true copy of the foregoing **DEFENDANT JESSICA HELSLEY'S MEMORANDUM OF OBJECTIONS TO EVIDENCE SUBMITTED IN SUPPORT OF PLAINTIFF'S OPPOSITION TO HELSLEY'S MOTION FOR SUMMARY JUDGMENT** to be served by electronically mailing a true and correct copy through LEWIS BRISBOIS BISGAARD & SMITH, LLP's electronic mail system to the e-mail addresses set forth below.

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